

Board	Author	Bill Number
California Integrated Waste Management Board	Firestone	AB 2181
Sponsor	Related Bills	Date Amended
Author	AB 228 (Migden), AB 964 (Bowen)	June 23, 1998

BILL SUMMARY

AB 2181 would clarify the definition of "each day of violation" with regard to accepting waste tires at an unpermitted waste tire facility and knowingly directing or transporting waste tires to an unpermitted waste tire facility. The bill would establish separate penalties for negligent and intentional violations of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law.

Additionally, this bill has been double-joined to AB 228 (Migden) and would incorporate the following changes if AB 228 and AB 2181 are both chaptered, become effective on or before January 1, 1999, and AB 2181 is chaptered last: (1) add abandonment of tires to the circumstances under which a person can be convicted of a crime; (2) allow a city, county, or city and county to request designation to exercise enforcement authority from the CIWMB with regard to waste tires; and (3) allow penalties collected for waste tire violations to be retained by the city, county, or city and county if the attorney who brought the action represents that local government entity.

BACKGROUND

AB 2181 is sponsored by the author, who wishes to promote the productive use of waste tires.

AB 2181 has been amended six times since its introduction in February, 1998, and its current form is close to the "as introduced" version. Language from AB 228 (Migden) has been double-joined to it; however, the language covering site access for remediation of tires is no longer part of AB 228 and therefore is not part of the language added.

Previous versions of AB 2181 would have required the CIWMB to submit reports on:
(1) its progress in reducing the landfill disposal and stockpiling of used whole tires by

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25%; (2) a phased strategic plan and cost estimate to eliminate existing stockpiles of whole waste tires and to replace the need for landfill deposition of shredded waste tire with a sustainable productive use for waste tires; and (3) the impact of waste tires imported from other states for use or disposal in California. In addition, earlier versions of AB 2181 would have increased the current tire fee from \$0.25 to \$0.50 per tire and extended its payment until June 30, 2004. Finally, AB 2181 in earlier forms, would have created a program for productive end use of waste tires and required the CIWMB to establish a certification process to identify qualified productive end users eligible for a \$0.20 per passenger tire equivalent (PTE) reimbursement from the California Tire Recycling Management Fund.

In 1997 Assemblyman Firestone authored AB 375, a comprehensive tire bill that would have (1) raised the tire fee and made it payable by motor vehicle manufacturers and tire wholesalers, (2) established a tire recycling reimbursement program, (3) required all state agencies to give a purchase preference to asphalt pavement containing recycled rubber, (4) prescribed minimum combined state agency utilization requirements for asphalt pavement containing recycled rubber, and (5) addressed several violation and enforcement issues. AB 375 failed passage on the Assembly Floor (20-41) on June 2, 1997, and was granted reconsideration and moved to the Assembly Inactive File where it died after failing to move out of the Assembly by the January 31, 1998 deadline

The California Tire Recycling Act (Public Resources Code [PRC] §42860-42895), Waste Tire program (PRC §42800-42859), and Tire Hauler Registration program (PRC §42950-42967) require the California Integrated Waste Management Board (CIWMB) to administer a tire recycling program and a waste tire facility and hauler regulatory program. The goal of these programs is to promote and develop alternatives to the landfill disposal of whole waste tires and protect the public health and safety and the environment with regard to waste tire facilities and haulers. Within the Act, PRC Section 42885 created the California Tire Recycling Management Fund, which is used to support tire recycling and regulatory activities. Revenues in the fund are generated by a fee of \$0.25 on each new tire sold (approximately \$4.5 million projected in Fiscal Year 1997-98). In addition, the CIWMB has a program to encourage the use of retreaded tires and increase the percentage of recycled materials used in paving applications.

California generates the largest number of tires annually and has the smallest recycling fee in the United States. There are insufficient markets to handle the annual flow of waste tires and even fewer opportunities to utilize legacy tires. Legacy tires are those which have been stockpiled over the years in the hope that they would someday have positive value, and for which there is no recycling fee associated. Legacy tires are more difficult to find markets for because of their generally unclean state, and are sometimes intermingled with debris and other waste materials.

On March 31, 1997, the Assembly Natural Resources Committee held an oversight hearing on California's tire disposal and recycling system. At that hearing, the CIWMB testified that there are more than 30.5 million waste or used tires produced in California annually. Additionally, the CIWMB estimates that there are currently more than 30 million tires stockpiled throughout the State in legal and illegal piles. Annually, California waste tire facilities receive approximately four to five million tires that have been exported from other states such as Oregon, Arizona, and Utah.

Of the approximately 35.5 million waste tires, which comprise the pool of waste tires annually available in California, approximately 15 million go into landfills or monofills or are disposed of illegally and 20 million are put to productive use or are exported. Waste tire generation in California is growing by approximately 2% annually.

RELATED BILLS

AB 228 (Migden) would add abandonment of tires to the circumstances under which a person can be convicted of a crime. It would also allow a city, county, or city and county to request designation as an enforcement authority from the CIWMB, and allow penalties collected to go to the city, county, or city and county. AB 228 passed the Senate Appropriations Committee (7-2) on April 20, 1998, and has been referred to the Senate Appropriations Committee (Rule 28.8) on June 29, 1998 and is now on the Senate Floor. The CIWMB has taken a "support" position on AB 228.

AB 964 (Bowen) would require the CIWMB, as part of its annual Budget request, to submit to the appropriate policy and fiscal committees of the Legislature, a report that describes the expenditures proposed to be made for that fiscal year by the board for grants, loans, and contracts under the tire recycling program. AB 964 passed the Assembly (48-24) on January 28, 1998, passed the Senate Environmental Quality Committee (9-0) on June 15, 1998 and has been referred to the Senate Appropriations Committee. A date for hearing has not been scheduled. The CIWMB has not taken a position on AB 964.

EXISTING LAW

State law:

1. Requires any person who accepts waste tires at a major waste tire facility which has not yet been issued a permit or knowingly directs or transports waste tires to a major waste tire facility which has not been issued a permit, upon conviction, to be punished by a fine of not less than \$1,000 or more than \$10,000 for each day of violation, by imprisonment in county jail for not more than one year, or by both fine and imprisonment (PRC §42825).
2. Requires any person who accepts waste tires at a minor waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a minor waste tire facility which has not been issued a permit, upon conviction, to be punished by a fine of not less than \$500 or more than \$5,000 for each day of violation, by imprisonment in the county jail for not more than one year, or by both fine and imprisonment (PRC §42835).
3. Requires any person who intentionally or negligently violates any CIWMB permit, rule, regulation, standard or requirement issued or adopted to be liable for a civil penalty not to exceed \$10,000 for each violation or, for continuing violations, for each day that the violation continues (PRC §42850).
4. Allows the CIWMB to delegate specific powers and authority under Chapter 16 (Waste Tires) commencing with Section 42800 to enforcement agencies, including the following:
 - (a) review of operations plans submitted pursuant to regulations for major waste tire facility

permits; (b) inspection of permitted facilities; and (c) enforcement of waste tire facility permits (PRC §42811).

ANALYSIS

AB 2181 would:

1. Clarify the definition of "each day of violation" for any person who accepts waste tires at an unpermitted major or minor waste tire facility or any person who knowingly directs or transports waste tires to an unpermitted major or minor waste tire facility. Define "each day of violation" as each day on which a violation continues, unless the person has filed a report with the CIWMB disclosing the violation and is in compliance with any order regarding the waste tires issued by the CIWMB, a hearing officer, or a court of jurisdiction;
2. Establish that the penalty, for any person who *negligently* violates any provision of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law (Chapter 16, commencing with §42800), shall be a fine of not less than \$500 nor more than \$5,000 for each violation, or for continuing violations, for each day that the violation continues;
3. Establish that the penalty, for any person who *intentionally* violates any provision of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law (Chapter 16, commencing with §42800), shall be a fine not to exceed \$10,000 for each day of violation, by imprisonment in the county jail for not more than one year, or by both.

In addition, if both AB 2181 and AB 228 (Migden) are enacted, become effective on or before January 1, 1999, and if AB 2181 is chaptered after AB 228:

4. Subject anyone who abandons waste tires at an unpermitted waste tire facility to the same penalties and/or jail time as anyone who, under current law, accepts waste tires at an unpermitted major/minor waste tire facility or knowingly directs or transports waste tires to an unpermitted major/minor waste tire facility (see #1 and #2 under Existing law above).
5. Allow a city, county, or city and county to request that they be designated by the CIWMB, in writing, to exercise enforcement authority with regard to waste tires. Requires any city, county, or city and county so designated to follow the same procedures set forth for the CIWMB and states that such a designation shall not limit the authority of the CIWMB to take action it deems necessary or proper to ensure enforcement.
6. Allow penalties collected for waste tire violations to be retained by the city, county, or city and county if the attorney who brought the action represents the city, county, or city and county.

COMMENTS

AB 2181 Similar to Sections of AB 375 of 1997. The provisions of AB 2181 would replicate sections of Assemblyman Firestone's AB 375 that focused on enforcement against violators of

waste tire law. AB 375, a much more comprehensive tire bill, failed passage on the Assembly Floor (20-41) on June 2, 1997, and was granted reconsideration and moved to the Assembly Inactive File where it died after failing to move out of the Assembly by the January 31, 1998 deadline.

Violations and Law Enforcement. AB 2181 would strengthen enforcement provisions allowing for more efficient prosecution of violators. The bill would increase the penalties for acceptance of waste tires at an unpermitted waste tire facility or for directing tires to an unpermitted waste tire facility by defining "each day of violation." The definition includes not only each day the tires are accepted or transported to the unpermitted site, but also includes each day the waste tires remain at the facility. Each day they remain at the site is considered a separate, additional violation unless the person has filed a report with the CIWMB disclosing the violation and is in compliance with any order regarding the waste tires issued by the CIWMB, a hearing officer or a court. AB 2181 would also create a separate violation penalty which includes jail time for "intentionally" violating any requirement related to major or minor waste tire facility permits. These tougher penalties are helpful to the CIWMB and district attorneys as a means of enforcing the law. Jail time, in particular, may be more of a deterrent to unscrupulous tire haulers than fines.

Generator Responsibilities. The only real weakness in AB 2181's enforcement provisions would be the wording that states "any person...who *knowingly* directs or transports" waste tires to a major or minor waste tire facility which has not been issued a permit shall be punished by a fine or a prison sentence. This provision would allow a generator to plead ignorance about the fate of its scrap tires once they leave its facility. In the competitive tire business, ignorance allows some generators to gain an economic advantage by use of unscrupulous haulers with little chance of repercussion. However, if the recently implemented scrap tire hauler regulations were modified to require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest, then the generator could no longer plead innocence to improper disposal. All ethical tire dealers would likely favor this modification because it will discourage their less ethical counterparts from gaining a competitive advantage through improper disposal. The manifest should identify the disposal facility, its permit number and expiration date. This system has worked effectively in Texas. AB 2181 should be revised to require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest.

Penalty Money to the CIWMB. Under current law, penalties collected for intentional or negligent violation of any provision of the chapter on Waste Tires (PRC § 42850) are deposited in the California Tire Recycling Management Fund (CTRMF) (PRC §42855). Since AB 2181 separates *intentional* and *negligent* violations into two separate code sections (PRC §42850 as amended, and new 42850.1), both code sections must be included in PRC §42855, in order that the same penalties in AB 2181 go to the CTRMF (or to the local government who brought the action). Since AB 228 already amends PRC §42855 to allow locals to get penalties for actions they bring, that would appear to be the appropriate place to make this amendment.

In addition, if both AB 2181 and AB 228 (Migden) are enacted, become effective on or before January 1, 1999, and if AB 2181 is chaptered after AB 228:

Addition of "abandoned". The justification for the addition of the "abandoned" term is that many lessees, as well as property owners, will transport or direct waste tires to a site. However, it is very difficult to prove these activities. It is very obvious when tires are abandoned on a site, especially by a lessee or a landowner that goes through a foreclosure proceeding. This term being added to the statute will provide a clearer path for conviction in such cases.

Local government enforcement authority. This change would provide an incentive for local enforcement agencies to assist the CIWMB in regulating the waste tire industry. At the present time, these entities are fully engaged and have little incentive to pursue penalty enforcement when the fines go only to the Tire Recycling Fund. Under this proposal, these fines could be used to support local tire enforcement efforts.

SUGGESTED AMENDMENTS

Amend PRC §42850.1 to replicate language in §42850 that imposes liability in a civil action or administratively, and allows a local government to exercise enforcement authority since §42850 has been split into two sections: negligent violation (§42850) and intentional violation (§42850.1).

Amend PRC §42961.5 to require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest.

LEGISLATIVE HISTORY

AB 2181 was introduced on February 19, 1998. It passed the Assembly Natural Resources Committee (8-2) on April 13, 1998; passed the Assembly Appropriations Committee (13-4) on May 20, 1998, passed the Assembly Floor (67-7) on May 27, 1998, passed the Senate Rules Committee (9-0) on June 15, 1998. It is set for a hearing before the Senate Appropriations Committee on July 13, 1998.

Support: California District Attorneys Association
California Cement Manufacturers Association
Planning and Conservation League
Sierra Club

Opposition: None received

FISCAL AND ECONOMIC IMPACT

By clearly defining the term "each day of violation," AB 2181 would strengthen enforcement provisions allowing for more efficient prosecution of violators and could bring increased revenues to the CIWMB tire program.

In addition, if both AB 2181 and AB 228 (Migden) are enacted, become effective on or before January 1, 1999, and if AB 2181 is chaptered after AB 228:

To the extent that local governments choose to exercise enforcement authority with regard to waste tires, AB 2181 could bring a potential increase in penalty revenues to local governments, and a potential cost to the CIWMB for local enforcement training.

By adding abandonment of tires to the circumstances under which a person can be convicted of a crime, AB 2181 would strengthen enforcement provisions allowing for more efficient prosecution of violators and could bring increased revenues to the CIWMB tire program or to local governments.

**AMENDMENTS TO AB 2181 (FIRESTONE)
AS AMENDED JUNE 23, 1998**

On page 6, line 5 insert:

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

(c) Upon request of a city, county, or city and county, that city, county, or city and county may be designated, in writing, by the board, to exercise the enforcement authority granted to the board under this chapter. Any city, county, or city and county so designated shall follow the same procedures set forth for the board under this article. This designation shall not limit the authority of the board to take action it deems necessary or proper to ensure the enforcement of this chapter.

Section 42961.5 of the Public Resources Code is amended to read:

42961.5. The board shall develop a waste tire manifest system for registered waste tire haulers that complies with all of the following conditions:

(a) The board shall develop a waste tire manifest form that shall be completed and shall accompany each shipment of waste tires from the point of origin to the processing, collection, storage, or disposal facility.

(b) The manifest form shall be signed by the generator, the waste tire hauler, and the processing, collection, storage, or disposal facility. Each party shall retain one copy of the manifest form.

(c) If waste tires are transported from a collection center, a new manifest shall be used until the waste tires reach a final processing, collection, storage, or disposal facility.

(d) Once tires have reached their final waste tire or disposal facility destination, a copy of the generator's manifest shall be returned by mail to the generator.

~~(d)~~ (e) No transporter shall receive waste tires and no person or facility shall accept waste tires for processing, collection, storage, or disposal without a properly completed manifest form, with the exception that the processor may accept waste tires that are delivered by a waste tire hauler without a manifest, if the processor reports the name of the waste tire hauler and the vehicle license number to the board.

~~(e)~~ (f) A waste tire hauler shall not transport any waste tires without having at all times, in the vehicle transporting the waste tires, a copy of the manifest for the waste tires, which shall be presented upon demand of an authorized representative of the board.

~~(f)~~ (g) Each party required to sign a manifest shall maintain it for three years and shall make it available for review during regular business hours.

Board	Author	Bill Number
California Integrated Waste Management Board	Escutia	AB 2237
Sponsor	Related Bills	Date Amended
Author	SB 451 (Watson) SB 906 (Lee) SB 1113 (Solis)	June 23, 1998

BILL SUMMARY

AB 2237 would require the California Environmental Protection Agency (Cal/EPA), the Resources Agency (RA) and the Department of Health Services (DHS) and the departments, boards, offices and commissions within those agencies to: 1) consider disproportionate human health and environmental effects, as well as funding trends, when awarding loans and grants; and 2) make information regarding these loans and grants readily available to the public, including through its Internet website.

BACKGROUND

Purpose of Bill. According to the author, "The State does not provide a one-stop shop for information on environmental loans and grants. Furthermore, most State agencies cannot ensure that its environmental loans and grants are awarded in a manner that is equitable and commensurate with environmental threats that high-risk communities face." The author asserts that "...environmental risks facing some communities are not balanced by assurance of environmental funding benefits. As a result, California places an unfair burden on these communities and perpetuates environmental injustice."

Federal Requirements on this Issue. On February 11, 1994, President Clinton signed Executive Order 12898 relative to "Federal actions to address environmental justice in minority populations and low-income populations." It directed relevant Federal agencies, "to the greatest extent practicable and permitted by law, to make achieving environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations..."

The Executive Order followed a 1992 report by the U.S. Environmental Protection

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California Environmental Protection Agency (Cal/EPA), the Resources Agency (RA) and the Department of Health Services (DHS) and the departments, boards, offices and commissions within those agencies.		
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Agency indicating that "...communities of color and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities and other forms of environmental pollution."

Number of Grant and Loan Programs Affected by AB 2237. In response to an inquiry by Assemblymember Escutia regarding grant and loan programs within the California Environmental Protection Agency (Cal/EPA), Secretary Rooney provided information indicating eight California Integrated Waste Management Board (CIWMB) programs, two Air Resources Board (ARB) programs, nine State Water Resources Control Board (SWRCB) programs, and one Department of Pesticide Regulation program. For programs within the Resources Agency, Secretary Wheeler identified three agency programs, seven California Energy Commission programs, two Department of Boating and Waterways programs, four State Coastal Conservancy programs, one California Coastal Commission program, five California Tahoe Conservancy programs, one Department of Forestry and Fire Protection program, eight Department of Fish and Game programs, five Department of Water Resources programs, two Department of Parks and Recreation programs, and five Department of Conservation programs. In addition, the Department of Health Services (DHS) administers several safe drinking water grant and loan programs. Many of these programs have specific statutory constraints, such as regional considerations or local match requirements.

RELATED BILLS

Three bills this session, other than AB 2237, also address environmental justice issues.

- SB 451 (Watson) would have required the general plan land use element to include policies for the equitable distribution of solid, hazardous, and liquid waste facilities that avoid disproportionate effects on low-income communities and minority communities, and feasible implementation measures to achieve these policies.

SB 451 was vetoed by the Governor, who cited "...The law presently contains an abundance of planning requirements, including provisions of extensive public hearings to address environmental and other land use planning concerns that include and exceed those contained in this bill."

- SB 906 (Lee) would have required a hazardous waste management plan to include demographic information within a 10-mile radius of each hazardous waste facility, and to include procedures for considering environmental equity issues. SB 906 was held in the Senate Environmental Quality Committee.
- SB 1113 (Solis) would have required the Office of Planning and Research, by January 1, 2000, to recommend proposed changes in, and the Secretary of the Resources Agency to certify and adopt revisions to, the California Environmental Quality Act (CEQA) Guidelines to provide for the identification and mitigation, by public agencies, of disproportionately high and adverse environmental effects of projects on minority and low-income populations. SB 1113 was passed by the Legislature, but was vetoed by the Governor, who cited the bill's

focus on minority and low-income communities and stated that, "environmental laws are, and should remain, color-blind." SB 1113 was heard at the June 1997 CIWMB meeting. The CIWMB members adopted a "no position" motion on SB 1113. The CIWMB members believed that land use policies were more properly addressed by other State agencies, such as the Resources Agency and the Office of Planning and Research.

EXISTING LAW

State law:

1. Requires Cal/EPA, the RA and DHS to implement, administer and enforce various human health and environmental protection laws and regulations (Public Resources Code [PRC] and Health and Safety Code [HSC], generally);
2. Establishes various loan and grant programs administered by these agencies and the departments, boards, offices and commissions within these agencies (PRC and HSC, generally); and
3. Requires the California Integrated Waste Management Board (CIWMB) to establish various loan and grant programs including:
 - a. Household hazardous waste (PRC §§ 47200-47203);
 - b. Tire recycling (PRC §§ 42872-42875);
 - c. Used oil collection projects grants (PRC §§ 3475-3494);
 - d. Local enforcement agency grants (PRC §§ 43230-43232);
 - e. Market development zones (PRC §§ 42010-42023);
 - f. Used oil collection and recycling programs (PRC §§ 48631-48634, 48674 and 48690);
 - g. Solid Waste Disposal and Codisposal Cleanup Program (PRC §§ 48020-48028); and
 - h. Farm and ranch solid waste cleanup and abatement grant program (PRC §§ 48100-48106).

ANALYSIS

AB 2237 would:

1. Make legislative findings and declarations regarding the Cal/EPA, the RA, DHS and their departments, boards, offices and commissions to address disproportionate human health or environmental effects of its programs, policies and activities on communities in California;

2. Make legislative findings and declarations regarding the need for the Cal/EPA, the RA, DHS and their departments, boards, offices and commissions to ensure that communities that experience disproportionately high and adverse human health or environmental effects receive access to environmental funding that is commensurate with those effects;
3. Require the Cal/EPA, the RA, DHS and their departments, boards, offices and commissions, to the greatest extent practicable and permitted by law, to consider certain selection criteria including:
 - a. Adverse human health or environmental effects faced by an applicant's community, as compared to other applicants' communities;
 - b. Amount of funding from loans and grants that is commensurate with those adverse effects and previously awarded to an applicant's community, as compared to other applicants' communities; and
 - c. Use of a narrative and one page summary for an applicant to respond to the criteria set forth in letters (a) and (b) above;
4. Provide an environmental agency may choose not to use the criteria in (#3) above if those criteria are not related to the environmental loan or grant to be awarded; and
5. Require the Cal/EPA, the RA, DHS and their departments, boards, offices and commissions, to make the following environmental loan and grant information available in a concise, understandable, readily accessible form, including through its Internet website:
 - a. Name and purpose of the loan or grant;
 - b. Estimated available funding;
 - c. Selection criteria;
 - d. Application and award process; and
 - e. A contact for further information.

COMMENTS

CIWMB Requirements. AB 2237 would require the CIWMB, to the greatest extent practicable and permitted by law, to incorporate the following selection criteria under its loan and grant programs: 1) the adverse human health or environmental effects faced by an applicant's community, as compared to other applicants' communities; and 2) the amount of funding from loans and grants administered by an environmental agency previously awarded to an applicant's community, as compared to other applicants' communities. In addition, the bill will require the

CIWMB to provide loan and grant information to the public in a “concise, understandable and readily-accessible form, including through its Internet website.”

CIWMB Grant and Loan Program Impacts. The awarding of grants and loans under the following programs would have to be significantly revised if this bill were to be enacted.

- The CIWMB's Diversion Planning and Local Assistance Division has two grant programs. The California Oil and Recycling Enhancement Act and the Household Hazardous Waste (HHW) Grants program authorize the CIWMB to administer grant programs to help keep used oil and other household hazardous substances out of the environment. Both used oil and HHW grants are available to local jurisdictions to establish or enhance local HHW collection and recycling programs. Currently, the CIWMB has active grants with all but 13 jurisdictions statewide serving more than 99 percent of California's population. Local environmental needs, with respect to used oil and HHW programs, are a primary consideration when awarding grants. Additionally, jurisdictions that have not received grants from the CIWMB in the past are given extra consideration.
- The CIWMB's Waste Prevention and Market Development Division has two grant programs -- the Recycling Market Development Zone (RMDZ) loan program and the Tire Recycling Grant Program. To date the CIWMB has awarded 169 Tire Recycling Grants and approved 92 RMDZ loans. The combined applicant pool for these grants and loans totaled approximately 600. There is no formal process in place to equitably distribute grant and loan funds.
- The CIWMB's Permitting and Enforcement Division is in charge of cleaning up solid waste disposal sites and illegal disposal sites through local enforcement agency grants, the Solid Waste Disposal and Codisposal Cleanup Program, and the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program. Solid waste disposal sites are cleaned up through loans and matching grants to local governments. Illegal waste disposal sites are cleaned up with grants to certified local enforcement agencies. The loan and grant programs use CIWMB-managed remediations utilizing the CIWMB's contractors. In prioritizing sites for remediation the Board is required to consider the following:
 - The degree of risk that site conditions pose to the public health and safety and the environment; (The degree of threat posed by the conditions at the site is determined by the Solid Waste Ranking System [SWRS] for solid waste disposal sites and the Illegal Disposal Site Ranking System for illegal disposal sites.)
 - The ability of the site owner to clean up the site without monetary assistance;
 - The ability of the CIWMB to adequately clean up the site with available funds; and
 - The maximal use of available funds.

Selection Criteria Impracticable to Implement. AB 2237 would allow an environmental agency to suspend use of the listed criteria if they are not related to the loan or grant. However, this change will not give relief to the CIWMB in cases where loans or grants are related to the criteria.

As part of the selection criteria for giving out the loans and grants, AB 2237 would require, to the greatest extent practicable and permitted by law, consideration of the following into the selection criteria: 1) the adverse human health or environmental effects faced by an applicant's community, as compared to other applicants' communities; and 2) the amount of funding from loans and grants administered by an environmental agency previously awarded to an applicant's community, as compared to other applicants' communities. This requirement is unclear in regard to the definition of "adverse human health or environmental effects" and how this should be compared in the loan/grant process. Without clarification, it would be difficult for the CIWMB to consider the selection criteria when awarding loans and grants.

While the funding criteria could be implemented rather simply, the selection criteria based on adverse human health or environmental effects would be impracticable to implement. It is not clear how adverse human health or environmental effects should be defined, nor are any guidelines provided as to how they should be compared in a competitive grant process. Staff know of no data or methodology readily available to effectively compare adverse human health or environmental effects between communities of applicants. To develop said criteria would involve a major effort by program staff and could involve the use of outside contractors and consultants. Such criteria would be difficult to develop and could not be practicably implemented and, therefore, should be clarified or deleted from the legislation.

Unfunded Mandate. Additionally, the amount of time and resources necessary to develop an objective and reasonable methodology to determine: 1) how to measure adverse human health effects or environmental effects for each grant or loan type; 2) a fair way to compare those effects amongst a group of diverse applicants; and 3) a formula to assign an amount of funding commensurate with those effects would be prohibitive. Staff time will be required to determine if the criteria could be practicably implemented and, if so, modify current CIWMB policy to incorporate the criteria and to revise loan and grant application packages. The CIWMB estimates that to implement the requirements of AB 2237 would cost \$40,000 (0.5 PY) in FY 1998-99 and range from \$140,000 (2 PY) in FY 1998-99 to \$420,000 (6 PY) in FYs 1999-2000 through FY 2000-2001 to implement.

Narrative and One Page Summary. AB 2237 would require an applicant to provide a narrative that responds to the listed criteria. This requirement will place a significant burden on the applicant because it is difficult, for instance, to determine the human health effects of having used oil enter a storm drain. Most applicants for State loans or grants do not have the expertise or resources to gather evidence to do research that would support claims of adverse human health or environmental effects. Again, this requirement of AB 2237 is impractical and should either be clarified or deleted.

Information on Agency Websites. AB 2237 would require agencies within the Cal/EPA, the DHS and the RA to provide specified basic information regarding loans and grants available to the public in a "concise, understandable and readily-accessible form, including through its Internet website." Information on CIWMB loans and grants is currently available on the CIWMB website, but it may not exactly mirror the Internet-accessible format proposed in this bill. However, since the CIWMB is already providing basic information regarding loans and grants on its Internet site, this mandate would have only a minor fiscal impact on the CIWMB.

Difference Between this Bill and the Executive Order. The Federal Executive Order 12898 refers to environmental justice, which is the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. AB 2237 is similar to the Federal Executive Order 12898 as it applies to environmental loans and grants that are administered by California's environmental agencies. However, rather than referring to the environmental justice "minority and low income populations" term, AB 2237 refers to communities that experience disproportionately high and adverse human health or environmental effects. AB 2237 also seeks consideration of funding that is commensurate with those adverse effects and ensures that grant and loan information is readily accessible through Internet websites.

Supporters' Comments. Supporters of this bill are generally concerned about the disproportionate exposure of communities to air and water pollution and other impacts from certain facilities, and the need to improve access to grant and loan funds. Supporters also believe that it would be helpful to target grants and loans to areas with the highest environmental risks.

Opponents' Comments. In opposing this bill, the Department of Fish and Game asserts that trustee agencies such as the department do not substantially affect human health or the environment, that the bill could divert funds away from areas or projects with high conservation value, and that determining the comparative, adverse impacts is subjective and outside the expertise of the Department.

SUGGESTED AMENDMENTS

The LPEC may wish to consider the following amendments:

1. Clarify how State agencies are to implement the selection criteria; and
2. Clarify how applicants are to determine adverse human health and environmental effects.

LEGISLATIVE HISTORY

AB 2237 was introduced on February 19, 1998. The bill passed the Assembly Natural Resources Committee (8-3) on April 20, 1998; passed the Assembly Appropriations Committee (13-8) on May 21, 1998 and passed the Assembly Floor (48-24) on May 26, 1998. The bill failed passage before the Senate Environmental Quality Committee (3-2) on June 29, 1998; the author was granted reconsideration.

before the Senate Environmental Quality Committee (3-2) on June 29, 1998; the author was granted reconsideration.

Support: African American Development Association
Communities for a Better Environment
East Bay Municipal Utility District
Environmental Defense Fund
Planning and Conservation League
Sierra Club
Waste Management

Oppose: Department of Finance
Department of Fish and Game

FISCAL AND ECONOMIC IMPACT

AB 2237 would impose one time start-up costs of approximately \$40,000 (0.5 PY) in FY 1998-99, and ongoing costs ranging from \$140,000 (2 PY) to \$420,000 (6 PY) in FY 1999-2000 through FY 2000-2001. Funding for these expenditures would be borne from the CIWMB's various accounts (the Integrated Waste Management Account, the California Tire Recycling Management Fund and the California Used Oil Recycling Fund).

The one-time start-up costs relate to the development of guidelines for all grant and loan programs. In addition, the bill imposes annual costs for establishing selection criteria pertaining to the adverse human health or environmental effects faced by applicant communities with respect to other applicant communities. The CIWMB cannot provide exact estimates because the sciences of environmental risks/hazards are in a state of continuous flux. For example what was viewed as having no or little effect on human health and the environment, when understood with past scientific knowledge, may, when viewed through the understanding provided by future science, be found to be extremely hazardous to humans and the environment.

Board	Author	Bill Number
California Integrated Waste Management Board	Wayne	AB 2521
Sponsor	Related Bills	Date Amended
California Associations of Environmental Health Administrators		June 23, 1998

BILL SUMMARY

AB 2521 would permit local enforcement agencies (LEAs) to recover costs in defending themselves against appeals of denials of a solid waste facility's permit where they prevail, eliminate the prohibition against a member of an independent hearing panel from serving for more than two consecutive two-year terms, and provide that a cease and desist order issued by an LEA against a solid waste facility operator shall remain in force and effect while any appeal by the operator is pending.

BACKGROUND

The sponsor of AB 2521 is the California Association of Environmental Health Administrators, which represent the LEAs for solid waste laws and regulations. According to the sponsor, this measure is intended to rectify several ambiguities or problems with current law governing their activities. Specifically, AB 2521 is intended to ensure that LEAs may recover their costs in defending themselves against appeals of denials of a solid waste facility's permit where they prevail, ensure stability and workability of LEA independent hearing panel membership, and ensure the enforceability of cease and desist orders while appeals are pending.

Local Enforcement Agencies (LEAs). The Integrated Waste Management Act, Chapter 1095, Statutes of 1989 (AB 939, Sher) allows the California Integrated Waste Management Board (CIWMB) to designate cities and counties as LEAs. Cities and counties, through their LEA designation, essentially serve as CIWMB's "enforcement arm" through on-site inspections to enforce State law and conditions placed on the operation of solid waste facilities by the CIWMB and/or a LEA. LEAs can also impose permit conditions, regulations and requirements on facilities operating within their jurisdiction.

Departments That May Be Affected

California Integrated Waste Management Board when acting as an enforcement agency.

Committee Recommendation

Committee Chair

Date

2-20

EXISTING LAW

State law:

1. Allows a solid waste facility operator to request that an LEA hold a hearing if the operator disputes any enforcement action taken by an LEA (Public Resources Code [PRC] §§44300-44310);
2. Requires all LEA hearings to be conducted by a hearing panel consisting of three members appointed according to one of the two following procedures:
 - a. In cases where the local government does not operate a solid waste facility in the jurisdiction, an LEA's governing body (either a county board of supervisors or a city council) may appoint three of its own members to serve as the hearing panel; or
 - b. In cases where the local government does operate a solid waste facility in the jurisdiction, the chairperson of the governing body must appoint an independent hearing panel of three members each with a term of two years, for not more than two consecutive terms (PRC §44308);
3. Authorizes the appointment of an independent hearing panel to conduct a public hearing in connection with the denial, suspension, or revocation of solid waste facilities permits ((PRC §44305);
4. Prohibits a member of an independent hearing panel from serving on the panel for more than two consecutive two-year terms (PRC §44308);
5. Provides that reports, notices and applications for solid waste facilities permits be submitted under oath (PRC §44006);
6. Provides that a solid waste facilities permit can be denied for the following reasons:
 - a. The application is incomplete or otherwise inadequate;
 - b. The applicant has not complied with California Environmental Quality Act;
 - c. The applicant has failed to demonstrate that the facility will meet minimum regulatory standards;
 - d. The application contains significant false or misleading information or significant misrepresentations; and
 - e. The CIWMB has determined that the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of the California Integrated Waste Management Act (PRC §44300);

7. Authorizes an applicant for a solid waste facilities permit to appeal the decision of an LEA to deny the issuance of a permit to an independent hearing panel appointed by the governing body of the LEA (i.e. a city council or county board of supervisors) (PRC §45017); and
8. Provides that a cease and desist order issued by an LEA against a solid waste facility operator shall be stayed pending any appeal of the order by the solid waste facility operator (PRC §45005).

ANALYSIS

AB 2521 would:

1. Permit an independent hearing panel member to be reappointed following the completion of two consecutive two-year terms;
2. Provide that, if an applicant for a solid waste facilities permit appeals a decision by an LEA not to issue a permit to a hearing panel and that decision is upheld by the hearing panel, who deems the appeal to be frivolous, an LEA may recover from the appellant any reasonable and necessary costs incurred during the appeals process;
3. Require an LEA to issue a written notice of a proposed denial of a permit to the applicant for the permit and specifies that an applicant may appeal the proposed denial pursuant to existing law; and
4. Provide that a cease and desist order issued by an LEA against a solid waste facility operator shall remain in force and effect while any appeal by the operator is pending.

COMMENTS

CIWMB Workshop on AB 59 Hearing Panel and Appeals Process. On June 16, 1998, the CIWMB held a workshop to identify key issues in Chapter 952, Statutes of 1995 (AB 59, Sher) local hearing panel procedures and appeals to the CIWMB. Included in the discussions were the purpose and what is and is not working in the appeals process. As a result of this workshop, the CIWMB may recommend changes to statute, regulations or internal administrative procedures.

Hearing Panels. Current law allows a solid waste facility operator to request a hearing before a hearing panel regarding any enforcement action taken by an LEA, against a solid waste facility, or in cases where the facility operator believes the permit conditions governing the facility are inappropriate. The hearing panel must either be an LEA governing board or an independent hearing board. Independent hearing board members are limited by current law to serving two two-year terms (cumulative four years). The hearing panels were established to deal with complex local and State permitting and enforcement issues.

Hearing Panel Term Limits. AB 2521 would delete the four-year term limit on independent panel members, thus allowing more continuity in panel membership and giving panel members

Hearing Panel Term Limits. AB 2521 would delete the four-year term limit on independent panel members, thus allowing more continuity in panel membership and giving panel members more opportunities to actually participate in a hearing. According to the sponsor, these panels do not meet frequently. As a result, it would not be uncommon for a panel member's term to expire before he or she serves on a panel that participates in a hearing. The sponsor believes that allowing independent members to serve longer periods of time would provide greater continuity and reduce administrative costs to local government agencies.

Recovery of Costs. AB 2521 would give an LEA the ability to recover the costs of holding an administrative hearing to review denial of a permit if the hearing panel determines that the appeal was frivolous. This may result in a decrease in the number of appeals overall, freeing up LEA resources to implement their core programs more efficiently. If a frivolous appeal was filed, the LEA's costs would decrease, while the appellant's costs would increase.

Cease and Desist Orders. AB 2521 would allow for a cease and desist order, in certain cases, to remain in effect in the event of an appeal to the hearing panel. This will allow LEAs, and the CIWMB when acting as the enforcement agency (EA), to enforce a cease and desist order during the time an appeal is being processed, even though there is less than an imminent and substantial threat to public health and safety or the environment. This will result in greater enforcement flexibility for the LEA and better overall protection of public health and safety and the environment. Another result may be a decrease in the number of appeals for this type of Notice and Order and in associated costs to LEAs, and the CIWMB when acting as EA.

LEGISLATIVE HISTORY

AB 2521 was introduced on February 20, 1998. The bill passed the Assembly Natural Resources Committee (7-2) on April 13, 1998; passed the Assembly Appropriations Committee (12-8) on April 22, 1998; passed the Assembly Floor (66-8) on May 14, 1998; passed the Senate Environmental Quality Committee (8-1) on June 15, 1998 and passed the Senate Appropriations Committee (28.8 Calendar) on June 29, 1998. The bill is awaiting vote on the Senate Floor.

Support: California Association of Environmental Health Administrators (sponsor)
Butte County Butte County Department of Public Health
California Public Interest Research Group
Regional Council of Rural Counties

Oppose: None on file.

FISCAL AND ECONOMIC IMPACT

Enactment of AB 2521 could result in some savings to both the CIWMB and LEAs. While the level of anticipated savings is currently unknown, the savings could accrue due to the following:

1. Both the LEAs and the CIWMB, while acting as an EA, would be able to recover their costs for frivolous appeals, thereby offsetting any costs incurred; and

2. The ability to recover the costs of frivolous appeals is likely to reduce the number of appeals initiated annually.

